

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 6, 2003

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, November 6, 2003, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Kerry Coulter (in A 1:35), Vice-Chair; James Barfield; Bud Hentzen (out @ 3:44 returned @ 4:24); Ray Warren (out @ 4:28); John W. McKay Jr.; Morris K. Dunlap; Elizabeth Bishop (in @ 1:30); M.S. Mitchell; Ed Sunquist; Frank Garofalo and Bob Hernandez. Bill Johnson and David Wells were not present. Staff members present were: Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jamsheed Mehta, Transportation Supervisor; and Rose Simmering, Recording Secretary.

1. Approval of MAPC meeting minutes October 9, 2003 and October 23, 2003.

GAROFALO I have a correction on the minutes for Oct. 23, page 35. It is just a clarification; it doesn't make sense the way it is there.

MOTION: To approve minutes October 9, 2003 & October 23, 2003 with correction from Commissioner Garofalo.

MITCHELL moved, **DUNLAP** seconded the motion, and it carried (10-0).

2-1. SUB2003-106 – One-Step Final Plat – FREE METHODIST CHURCH ADDITION. located south of 29th Street North, on the west side of Oliver.

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A drainage easement is needed.**
- D. The final plat shall reference the dedication of access controls in the plat's text. **One opening limited to right-turns in/out is permitted 200 feet from the south property line. The applicant shall also submit a cross-lot access agreement with property to the north in order to share a future driveway to be located in alignment with the WSU complex across Oliver.**
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- F. The 60-ft half street right of way needs to be scaled correctly.
- G. The boundary dimensions need to be revised.
- H. The plat's text needs to address the flood zone.
- I. If minimum pads are required due to flood zone, a benchmark will be needed.
- J. The pipeline easement needs to be located.
- K. The recording information for the pipeline easement shall be indicated on the face of the plat.
- L. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- M. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- N. The signature line for the City Clerk needs to be revised to reference "Karen Schofield".
- O. The Applicant is reminded that an updated platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. "Addition to Wichita, Sedgwick County, Kansas" needs to be denoted under the title of the plat.

- Q. The plat's text shall reference the "Free Methodist Church Addition".
- R. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- S. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- T. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- U. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- V. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- W. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- X. Perimeter closure computations shall be submitted with the final plat tracing.
- Y. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Z. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **SBC has requested additional easements.**
- AA. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, DUNLAP seconded the motion, and it carried (10-0).

2-2. SUB2003-105- Final Plat -REDMOND ESTATES ADDITION, located on the west side of 119th Street West and south of 31st Street South.

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. **A memorandum shall be obtained specifying approval of the proposed individual alternative sewer system from County Code Enforcement along with a maintenance agreement.**
- B. **City Water and Sewer Department** requests a petition for future extension of sanitary sewer and City water services. **The Subdivision Committee required the submittal of a No Protest Agreement of an unlimited duration for future extension of water and sewer services. The Agreement shall specify that 50% of the costs of the future sewer line along 119th Street shall be assessed on an equal per-lot basis. Utility easements for future city services are requested.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **Minimum pads need to be reviewed.**
- E. The plat denotes complete access control along the plat's frontage to 119th St. West. In accordance with Access Management Regulations, complete access control is required for rural arterials intersecting with local/collector streets. **Complete access control of 150 feet is needed along W. 33rd St and W 34th St from 119th St. West, with the exception of Lot 1, Block F which is recommended to be 100 feet of complete access control. The access controls along 119th St. need to be revised to only include property being platted.**

Access controls have been platted as requested.

- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. The guarantee for relocation of the drive on Lot 7, Block F to 34th St. may be at time of street construction
- G. **City Traffic Engineering** requests a petition for future left turn lanes.
- H. Per Sedgwick County Fire Department, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed)
- I. The applicant shall guarantee the installation of the proposed streets. The cul-de-sacs need to be a 36-foot rock standard. The 32-ft standard is needed for the other streets. This guarantee shall include the installation of a temporary turnaround at the terminus of Firefly Drive at the plat's north line. The temporary turnaround should be denoted on the face of the plat and the plat's text should indicate that the vacation of the temporary turnaround area will be effective upon the extension of the street northward.
- J. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA - NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- K. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- L. The plat needs an onsite benchmark.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). The City and County GIS Departments will use this.

NEIL STRAHL Planning staff. The Subdivision Committee requested a no protest agreement, and this would allow the City to order in the project and construct water and sewer improvements without consent of the property owners. Their property would be included in the sewer and water benefit districts, and the owners will have waived the right to protest. Subdivision Committee also specified that 50% of the cost of the future sewer line along 119th Street would be assessed on an equal per lot basis. City Water and Sewer Department is appealing the Subdivision Committee's decision, and we have the Department Director David Warren here to address the Commission.

DAVID WARREN, Director of the Water and Sewer Department, presented the following:

Testimony Concerning Redmond Estates Addition
David Warren, Director of Water and Sewer Department

City of Wichita

November 6, 2003

The City of Wichita appreciates that opportunity to comment on the proposed Redmond Estates Addition, located south of 31st St. S. and 119th St. W. The City has concerns about this proposed development. This proposed plat will be located just over one mile from existing water lines, and only 1 mile from the City's sanitary sewer system. The water and sewer lines currently being designed for the Harvest Ridge Addition located at K-42 and Maize Rd. will bring water and sewer lines within ½ mile of this proposed addition.

The Subdivision Committee recommends that the lots be served with individual sewage disposal units, and that "no protest agreements" be used to allow the City to "order in" water and sewer service in the future. The City continues to believe that those agreements would be difficult to execute in the future, especially when there is no precedence that the City Council has successfully ordered in utilities under such circumstances. The Subdivision Committee also specified that 50% of the cost of future sewer line along 119th St. shall be assessed on an equal per lot basis, but it makes no such guarantees for any water mains or any other sewer mains if they are installed in any other location. Without the assurance that the water and sewer lines can be assessed to this area, it will increase the cost of the water and sewer systems for future developments in that area. If the City does order in water and sewer services, the size of these lots will cause them bear a substantial financial burden for the installation of the new lines.

The City addressed this body about Hilltop Acres Estates only two weeks ago. That development was approximately 1½ miles from water and sewer services. The City asked if a development was located ¼ mile from water and sewer service, would this body approve it, if it did not include providing municipal water and sewer service? Or, if it made a difference if it was ½ mile, or 1 mile? This plat is only ½ mile from the City limits, and only ½ mile from water and sewer service. Where is the point at which you, as a planning entity, are willing to allow the City's growth area to be eaten up by leapfrog development without essential municipal services. The City invested millions of dollars in plants and large pipelines for the benefit of these areas. Now the City cannot reasonably recover the cost of those investments. There is absolutely no doubt that this plat will be touching the City's corporate limits in a few years. By approving this development, and its individual water and sewer systems, you are stating that you are willing to sentence the future residents of this plat to substandard water and sewer systems, and also inadequate fire protection, while located within the City.

At your last meeting, the City stated that it doubted that the type of plat represented by Hilltop Acres would be the only proposed plat of this kind on the fringe of the City that will come before this body. Now, only two weeks later the City is back before you, not on another 40-acre plat, but an 80-acre plat. The City asks this body to recognize the importance of protecting the City's future growth for the benefit of all tax and rate payers who will be forced to pay for poor planning.

The City recognizes that developers can sometimes buy land at a lower cost slightly farther out from the current growth ring of the City, as this plat demonstrates. The City also recognizes the higher cost to extend services to those more remote locations. The City is willing to consider alternative means of funding those extensions that would reimburse a developer for additional costs to extend a line as the land is developed along the new line. While there is a significant amount of work needed to implement such a policy, the City thinks it is worth exploring, and the City has asked WABA to help shape this additional development tool. Such a tool would address many of the issues associated with this type of plat.

Because of this plat's impact on the growth pattern for the City, and the impairment of the expansion of City services, the City opposes this plat.

PHIL MEYER, Baughman Company, **This** plat, Redmond Estates Addition, and Hilltop Acres plat are just starting with this alternative sewer. Both of the plats are in the county, and they happen to be within the growth area of The City of Wichita and, they have sewer and water at least a mile away. Sewer and water to this plat, to the north, is over a mile away. I do not believe that sewer to the north would be able to serve this, and it would possibly be the sewer from the south. Or, I believe, as stated in the Subdivision meetings, it is going to be the sewer treatment plant in the southwest part of town someday in the future.

With the Hilltop Acres plat, the Subdivision Committee and the Planning Commission approved that with the requirement for a petition for utility mains, sanitary and water mains, and they pay 1/2 the cost to get across the frontage, and then we get a no protest agreement for all the interior stuff. I would like to make that same recommendation for this plat, Redmond Estates Addition.

Right now, it is setup for no protest agreements for everything, the sewer main and the arterial. They would pay ½, and the interior stuff is all a no protest agreement, and that is the way Subdivision Committee approved it. I am looking to get some consistency from these plats so we can set a standard of what developers can expect.

I would like to propose on this plat we approve it with a petition for the sanitary and water main at 119th, and a no protest agreement for the interior stuff. The no protest agreement, I believe, is a better solution, and there is a big unknown out there and that big

unknown is when will sewer and water go by this site. If you look at the development south of Kellogg, and how it has happened over the last 10 years, it has been very slow in development. The sewer lines, I believe, are at capacity at the north, and really cannot extend down to serve this from the south, and knowing the limitation of where sewer is at today, and the need for the new treatment plant in the southwest service area, it could be 10-12 years before it is available.

This is really a political question. If you have the developer sign petitions now for the internal stuff, there is a question as to how long those petitions are valid, and how long those petitions are good. We don't have an answer to that. It really has not been defined. What I believe myself ... let's say that it is 12 years before sewer and water goes by this development. If those petitions are no longer good, and they are no longer valid, the City has a problem, and the Council has a problem on ordering those petitions in. I believe that if this development happens in 12 years, whether you have petitions for sewer and water, or whether you have a no protest agreement ... either one comes down to a political question.

I believe the no protest agreement is a solution that takes away the protest right of those homeowners. If you have a petition that is no longer valid or good, then that will put that Council member at a greater disadvantage than a no protest agreement. Now they have the right to protest. Now they are still forced to order in that sewer.

MCKAY Using your scenario of 12 years before the utilities get there, are the people buying that property going to know that there is a no protest agreement, and a petition for the mains?

MEYER The no protest agreement is a document that gets recorded at the register of deeds. So every time a house is bought and resold, in the title work of the purchaser, it shows up that there is a no protest agreement for future sewer and water specials on that site.

MITCHELL There is a difference between your opinion, on what the market for land in this area is, and the City's. If the City is correct in that these approximate one-acre lots cannot afford municipal services, what happens when the services get out there?

MEYER To spread sewer and water on one-acre lots it gets expensive. Those lots can afford sewer and water.

MITCHELL How will municipal services get through this subdivision to another one to the west?

MEYER We have, through the subdivision process, approval put in all the easements necessary to extend sewer and water through the whole subdivision. So the easements are in place in public easements or right-of-way.

BISHOP The main difference between the petition approach and the no protest approach is the no protest is binding on people that purchase lots in this subdivision. A petition would also be binding on each of the lots. The difference is that with a petition there would be an amount mentioned so that someone who is looking to purchase a home in that subdivision would have an amount that they could look at as a potential cost associated with that lot. With a no protest, it would be open-ended.

MEYER Potentially, the petition is on file at City Hall. There is a certificate of petition at the Register of Deeds, so when they get their title work it puts them on notice that City Hall is holding a petition. Now, that petition amount, whatever that amount might be, has a 1% crawl in it to cover inflation. You could look at that petition, but if you are 5-8 years down the road nobody really knows what that sewer cost is going to be. I can't tell you what the cost will be. We want the no protest agreement to state in it clearly that all lots will be assessed on an equal, equitable basis.

MARNELL If it was a straight petition there would be a figure associated with it? Would that figure have any more validity in that petition, as opposed to a no protest agreement; wouldn't it be the same figure?

MEYER It is the same number when it gets built because those petitions carry an inflation clause that allows it to increase as time goes by. That is probably part of the reason the Bond Council has a problem with the life expectancy of these things because you can't protest what is going to happen 8-10 years from now.

WARREN When the petition is activated, and then bids or cost estimates are brought in; those are over 25% of what was published in the petition. I think the petition has to be redone anyway, correct?

MEYER I don't know the answer to that.

WARREN I think every one that I have looked at is that you are good unless your numbers are off over 25%. If that is the case, then you have to go back and re-petition.

BISHOP I have heard the assertion that the petitions are not good in the future and they have a limited life and so forth, I would like to hear some legal opinion.

JOE LANG, City Attorney I cannot answer that question.

DAVID WARREN I know that there have been issues that have been raised in the past with regard to the validity of the petitions over some period of time. But what I cannot tell you for certain is whether that was related to the age of the petition or the wording in the petition as it was originally done. I think we should be getting that question answered by someone from the City Attorney's office that has more experience with this area.

MCKAY What has increased the cost over the last 7 years to put sewers in?

DAVID WARREN The price has increased about 15-20%.

GAROFALO What is your opinion on how soon the services might be available to that area?

DAVID WARREN If we had a petition for the extension for water and sewer services today, the City would be about looking for how we would extend service into that area. As far as when is the City going to construct a new waste water treatment facility in that area, we currently have a contract with Professional Engineering Consultants for a site study that will be underway in the next month or two. A site will be acquired in that area for a sewage treatment facility, and a design will be done. Another three years, we will have a new waste water treatment facility out there.

GAROFALO So the suggestion by the applicant's agent that we are talking about 10-12 years is off base?

DAVID WARREN By looking at this map up here, you can already see platted development touching the corner of it.

DUNLAP That platted development ... is it serviced by water and sewer right now?

DAVID WARREN It will be. They are in the process of putting in the facilities in that particular development, it has been platted and petitioned and it is going to be constructed.

DUNLAP These words in your handout "Substandard water and sewer systems" what do you mean by "substandard"? I have to look at the individual sewer systems that have been approved in the County as producing a good result. Is that substandard compared to the City's sewer system or is the water system?

DAVID WARREN I believe both. I believe a municipally owned and operated systems with regard to their track record have operated in a superior manner to any privately owned and operated system. The water quality is assured to the homeowner through routine testing that happens everyday.

DUNLAP Does that apply in areas where the Rural Water District services also?

DAVID WARREN A Rural Water District is a utility and they are providing water as a utility. In terms of water quality, yes they are able to provide the quality. In terms of providing a municipal level of service, they are not.

DUNLAP But the individual sewer systems, which the county has approved, produce an effluent that is less or more harmful than what the City produces?

DAVID WARREN They are going to have to meet KDHE requirements that they are acceptable, but regarding providing service and maintenance, they are not.

BARFIELD In your handout, you state that the City has invested millions of dollars in plants and large pipelines for the benefits of these areas. Does this include this area?

DAVID WARREN Yes, it includes that area.

MEYER The plat to the northwest is called Overview Hills, it is a five-acre tract development and presently served by lagoons and water wells and there are not plans at the moment, I think he meant Harvest Ridge development. Harvest Ridge development is on Maize Road and K-42, so it is 1/2 mile away. There is a big unknown in development time. This area has developed slowly. I hope it will develop quickly someday. Whether you got petitions or a no protest agreement, you have a political battle. I believe the no protest agreement is a more usable tool for the Council member as it is something they know that they could use without having to have that state statute at 51%.

WARREN Serving on Subdivision Committee, we have wrestled with this in 2-3 plats already. This is a county plat. I am saying here we have a compromise to bring the sewer to the addition or through the addition, so it is available if that no protest petition is available. The difference between the no protest and the regular petition is one that is arbitrary just to put it in whenever you want. I feel the other would take some burden of proof on the agency bringing in the sewer to show that it is needed. We have reviewed this plat, and this plat meets and fulfills all obligations of the subdivision regulations. I find it very difficult to see where we have grounds to deny this plat, as they have proposed.

BISHOP I think the main reason for requiring the petition is basically good planning. This is a county plat, but I don't believe the county has any intention of making problems for the City. It is obvious that this area will be annexed, and probably not in the too distant future. The petition, at the very least, puts a dollar amount so people who are purchasing homes in that area know what that expense is to potentially pay for the water and sewer services that in the future will be needed.

BARFIELD I think there are some legal issues that have not been resolved, and we are basically setting precedence here. I would like to defer this for a couple of weeks.

MOTION: To approve this plat as the Subdivision Committee approved it, using the no protest petition versus the ordinary sewer petition.

WARREN moved, **MITCHELL** seconded the motion.

SUBSTITUTE MOTION: To defer until we have gotten some legal advice on the standing of the petition question and that we reconsider it in two weeks time.

BISHOP moved, **BARFIELD** seconded the motion.

WARREN I have heard this argument for 10 years. I don't think we are going to get a legal opinion on this because you are going to have Bond Council saying one thing, and I don't think we will get a definitive answer to the issue that Commissioner Bishop is trying

to get.

BISHOP We have been given legal opinions by Commission members, and by the applicant, and I would like to get a legal opinion by an attorney.

MARNELL I would be interested in hearing the legal opinion. I think it would do us all good to hear the information. I will support the substitute motion.

WARREN If we are going to defer, perhaps legal can include whether or not this Board has a right to just subjectively make that requirement when it is not a part of the ordinance today. Even though somebody may think a petition is better than a no protest, we still have to deal with the fact what is our power, and what is the limit of our power.

MITCHELL I think there has been ample time, and if the City had any interest in answering this question they could have come up with it in the six weeks or so that it has been discussed.

BISHOP We have attorneys that advise us on what we have the power to do all the time, and it doesn't have to be a part of the motion. I do not want to amend my substitute motion.

BARFIELD Two weeks ago when we dealt with the other plat Mr. David Warren was not here.

VOTE ON SUBSTITUTE MOTION: Carried 7-5 (MITCHELL, DUNLAP, WARREN, SUNQUIST, HENTZEN opposed)

LANG We promise an opinion that is not wishy-washy and we have been in discussion on this issue.

2-3. SUB2003-93– Final Plat – STEVE KELLEY FIFTH ADDITION, located on the south side of 13th Street North, east of Hoover Road.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. A temporary easement by separate instrument should be submitted to cover the existing sewer line to be abandoned unless the sewer line is abandoned before the plat is recorded.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. An off-site drainage easement is needed in the event the applicant does not obtain an off-site dedication of street right-of-way for the west half of Doris south of the plat.**
- E. **Traffic Engineering** needs to comment on the need for additional right-of-way along 13th Street. **A 10-ft sidewalk, utility and traffic sign easement is requested.**
- F. **The Subdivision Committee approved a joint access opening for Lots 1 and 2, Block A. A temporary opening is permitted for Lot 1 which shall be closed upon removal of the house.**
- G. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- H. The Applicant shall guarantee the paving of the proposed streets.
- I. **The paving guarantee shall include the installation of a temporary turnaround at the terminus of Doris at the plat's south line or in the alternative the applicant shall obtain an off-site dedication of street right-of-way for the west half of Doris south of the plat.** The plat's text should indicate that the vacation of the temporary turnaround area will be effective upon the extension of the street southward.
- J. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- K. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.

- M. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- N. **GIS** needs to comment on the plat's street names. **Whitehall needs revised to Clara.**
- O. Several lot dimensions need to be corrected
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Y. The applicant is reminded that a compact disk (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Departments.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, **DUNLAP** seconded the motion, and it carried (10-0).

2-4. SUB2003-122– One-Step Final Plat –AUBURN HILLS 15th ADDITION, located west of 135th Street West, on the north side of Kellogg.

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved. In the alternative, a restrictive covenant shall be submitted limiting this portion of the site to uses permitted in the SF-5 zoning district.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **City Engineering requests additional information.**
- E. The plat proposes a full movement intersection on Kellogg at a quarter-mile point on Kellogg. **Traffic Engineering** has advised that the City has worked with KDOT on an access management plan for the Kellogg Freeway that allows only signalized full movement intersections every half-mile. **The developer will need to obtain KDOT's approval for connection to Kellogg prior to development.**
- F. The applicant is advised that the right-of-way width of Dogleg Cir may be revised to the 58-ft standard for cul-de-sac streets.

- G. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- H. As noted in the platlor's text, the applicant intends to restrict the utilities to easements on Reserves A and B and therefore such easements should be platted in these reserves.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. Since Reserve C includes a swimming pool use, a site plan shall be submitted with the final plat tracing, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- L. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- M. The blocks need to be renumbered (dividing Block A into two blocks), as the perimeter of the blocks should be bounded by streets. Block D should be encompassed within Block A.
- N. **GIS needs to comment on the plat's street names. The will be requesting that Dogleg in the adjacent plat to the north be revised to Auburn Hills by affidavit. The northernmost cul-de-sac shall be denoted as "Ct". Cross St. shall be assigned two new street names.**
- O. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. For any lots with existing tree rows that may be impacted by the installation of utilities, it is recommended that 30-ft utility easements be platted in order to allow for the installation of the utilities without damage to such tree rows.
- Q. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy requests additional easements.**
- Z. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Departments.

MOTION: To approve, subject to staff comments and citing the findings in their report.

COULTER moved, DUNLAP seconded the motion, and it carried (11-0-1) MCKAY conflict of interest

2-5. **DED2003-22 – Dedication of a Utility Easement, for property located on the west side of Maize Road, south of 29th Street North.**

OWNER/APPLICANT: Socora Village Company, C/O Larry Chambers 727 N. Waco, Ste. 400, Wichita, KS 67203

AGENT/SURVEYOR: PEC, P.A., C/O Rob Hartman, 303 S. Topeka, Wichita, KS 67202

LEGAL DESCRIPTION: A 20' Utility Easement located in Lot 21, Block 9, Evergreen Addition, Wichita, Sedgwick County, Kansas, the centerline of which is described as follows:

Commencing at the northeast corner of Lot 21, Block 9, Evergreen Addition; thence S1°24'27" W along the east line of Lot 21, Block 9, a distance of 40.00 feet; thence N89°47'16"W, a distance of 158.5 feet, to the point of beginning; thence S1°24'27"W, a distance of 294.67 feet to the point of ending.

PURPOSE OF DEDICATION: This Dedication is a requirement of a Lot Split (Case No. SUB 2003-119) and is being dedicated for construction and maintenance of public utilities.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, DUNLAP seconded the motion, and it carried (10-0).

2-6. **DED2003-23 – Dedication of a Utility Easement, for property located on the west side of Maize Road, south of 29th Street North.**

OWNER/APPLICANT: Socora Village Company, C/O Larry Chambers 727 N. Waco, Ste. 400, Wichita, KS 67203

AGENT/SURVEYOR: PEC, P.A., C/O Rob Hartman, 303 S. Topeka, Wichita, KS 67202

LEGAL DESCRIPTION: A 20' Utility Easement located in Lot 21, Block 9, Evergreen Addition, Wichita, Sedgwick County, Kansas, the centerline of which is described as follows:

Commencing at the northeast corner of Lot 21, Block 9, Evergreen Addition; thence S1°24'27" W along the east line of Lot 21, Block 9, a distance of 40.00 feet; thence N89°47'16"W, a distance of 921.60 feet, to the point of beginning; thence S1°22'53"W, a distance of 874.21 feet, to south line of said Lot 21; thence along a curve to the right with a chord bearing of N89°06'32"W and a radius of 403.00 feet, through a central angle of 2°50'39", an arc distance of 20.01 feet; thence N1°22'53"E a distance of 873.38 feet; thence S89°47'16" a distance of 20.00 feet the point of beginning.

PURPOSE OF DEDICATION: This Dedication is a requirement of a Lot Split (Case No. SUB 2003-119) and is being dedicated for construction and maintenance of public utilities.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, DUNLAP seconded the motion, and it carried (10-0).

2-7. **DED2003-24 – Dedication of a Utility Easement, for property located on the west side of maize Road, south of 29th Street North.**

OWNER/APPLICANT: Socora Village Company, C/O Larry Chambers 727 N. Waco, Ste. 400, Wichita, KS 67203

AGENT/SURVEYOR: PEC, P.A., C/O Rob Hartman, 303 S. Topeka, Wichita, KS 67202

LEGAL DESCRIPTION: A 20' Utility Easement located in Lot 21, Block 9, Evergreen Addition, Wichita, Sedgwick County, Kansas, the centerline of which is described as follows:

Commencing at the northeast corner of Lot 21, Block 9, Evergreen Addition; thence S1°24'27" W, along the east line of Lot 21, Block 9, a distance of 40.00 feet; thence N89°47'16"W, a distance of 508.90 feet, to the point of beginning; thence S1°22'53"W, a distance of 670.85 feet, to south line of said Lot 21, Block 9; thence S54°24'27"W, along the south line of said Lot 21, a distance 25.04 feet; thence N1°22'53" E, a distance of 685.50 feet; thence S89°47'16"E, a distance of 20.00 feet to the point of beginning.

PURPOSE OF DEDICATION: This Dedication is a requirement of a Lot Split (Case No. SUB 2003-119) and is being dedicated for construction and maintenance of public utilities.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, **DUNLAP** seconded the motion, and it carried (10-0).

2-8. DED2003-25 – Dedication of a Utility Easement, for property located on the west side of maize Road, south of 29th Street North.

OWNER/APPLICANT: Socora Village Company, C/O Larry Chambers 727 N. Waco, Ste. 400, Wichita, KS 67203

AGENT/SURVEYOR: PEC, P.A., C/O Rob Hartman, 303 S. Topeka, Wichita, KS 67202

LEGAL DESCRIPTION: A 20' Utility Easement located in Lot 21, Block 9, Evergreen Addition, Wichita, Sedgwick County, Kansas, the centerline of which is described as follows:

Commencing at the northeast corner of Lot 21, Block 9, Evergreen Addition; thence S1°24'27" W, along the east line of Lot 21, Block 9, a distance of 30.00 feet; thence N89°47'16"W, a distance of 148.5 feet, to the point of beginning; thence continuing N89°47'16"W, a distance of 966.71 feet to the point of ending.

PURPOSE OF DEDICATION: This Dedication is a requirement of a Lot Split (Case No. SUB 2003-119) and is being dedicated for construction and maintenance of public utilities.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: To approve, subject to staff comments and citing the findings in their report.

HENTZEN moved, **DUNLAP** seconded the motion, and it carried (10-0).

3-1. VAC2003-54 – Request to Vacate a Platted Setback.

OWNER/APPLICANT: Emprise Bank c/o MD Michaelis
Sunset Holdings LLC c/o Todd Allen
BENCOR c/o Jon Gorski

AGENT: Baughman Company PA, c/o Russ Ewy

LEGAL DESCRIPTION: The 35-foot building setback line running parallel to a portion of the north and east property lines of Lots 1 & 2, Block 5, Maple Dunes Addition, Wichita, Sedgwick County.

LOCATION: Generally located on the northeast corner of the Maple Street and 135th Street West intersection

REASON FOR REQUEST: New development on the site.

CURRENT ZONING: Subject property and properties to the south are zoned "LC" Limited Commercial. Properties to the north and east are zoned "SF-5" Single Family Residential. Property to the west is zoned "GO" General Office

This site has an overlay on it, PO#17, and the applicant had applied for an amendment to PO#17, ZON03-54, which would revise signage restrictions, access control & parcel configuration. The 35-foot setback is located entirely within Lot 2, runs parallel to portions of the north and east property lines of Lots 1 & 2, which are located in the interior of the site. The applicant proposes development of the site, which the amendment to PO#17 and the vacation of the described setback will accomodate. The UZC's

interior side setback for the "LC" zoning district is zero feet, but if an interior side setback is provided it shall be a minimum of 5-feet. The owners of both Lots 1 & 2 signed the application and petition. The Maple Dunes Addition was recorded July 15, 1997.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties, Planning Staff recommends approval to vacate the 35-foot platted setback as recorded on the Maple Dunes Addition, with the conditions

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time October 16, 2003 which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setback and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the 35-foot platted setback as recorded on the Maple Dunes Addition and described in the petition should be approved with conditions;
 - A. Vacate the 35-foot platted setback as recorded on the Maple Dunes Addition, with the condition that the amendment to PO#17, ZON03-54, be approved by the WCC. The interior side setback will be as recommended in the amendment to PO#17, ZON03-54.
 - B. Dedicate 10-foot of ROW to both 135th Street East and Maple Street where Lots 1 & 2, Block 5, Maple Dunes Addition abut them.
 - C. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - D. All improvements shall be according to City Standards.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- A. Vacate the 35-foot platted setback as recorded on the Maple Dunes Addition, with the condition that the amendment to PO#17, ZON03-54, be approved by the MAPC. The interior side setback will be as recommended in the amendment to PO#17, ZON03-54.
- B. Dedicate 10-foot of ROW to both 135th Street West and Maple Street where Lots 1 & 2, Block 5, Maple Dunes Addition abut them. **THE SUBDIVISION COMMITTEE RECOMMENDED THAT THIS CONDITION BE REMOVED.**
- C. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- D. All improvements shall be according to City Standards.

BILL LONGNECKER, Planning staff. Correction on staff report, Condition B, there is a discrepancy between what was recommended by staff and what was recommended by Subdivision. Subdivision recommended that this condition "B" be removed. The staff and the applicant have agreed to a 10-foot sidewalk easement be dedicated along those right-of-ways.

RUSS EWY, Baughman Company We have come to an agreement with Traffic Engineer, Scott Logan, and we are willing to dedicate a 10-foot sidewalk/utility easement in lieu of that dedication of right-of-way.

MOTION: To approve item 3-1 as modified.

WARREN moved, **COULTER** seconded the motion, and it carried (12-0).

3-2. VAC2003-55 – Request to Vacate an Alley.

APPLICANT: RJ Realty LLC

AGENT: Baughman Company, P.A. c/o Terry Smythe

LEGAL DESCRIPTION: That part of the platted alley, running north & south, abutting Lot 1, the Ripstra Addition (west side) & Lot 1, Scholfield Hatchett 3rd Addition (east side) and that part of the platted alley, running east & west, abutting Lot 1, Scholfield Hatchett 3rd Addition (east & south sides) & Lot 5, Block 10, Eastridge Addition of Wichita, Sedgwick County, Kansas,

LOCATION: South of Kellogg Drive & west of Gouverneur Road

REASON FOR REQUEST: Remove dead end alley

CURRENT ZONING:

Right-of-way surrounded by "LC" Limited Commercial on its east, west and southeastern portion of its south side and "TF-3" Two-family Residential on its southwestern portion of its south side

The applicants are requesting to vacate a 20-foot alley right-of-way for the future development of the lot. The alley's south to north run accesses onto Kellogg Drive, running between an auto dealership and a bowling alley. Both of these businesses have direct access onto Kellogg Drive. The alley's east-west run dead ends against a restaurant's parking lot on the west side and the previously mentioned auto dealership on its east side. The alley had run to Gouverneur Road on its east side, but this portion of the alley has been vacated, through replat. The petition and application is signed by 2 of the 4 abutting property owners that have access rights; the auto dealership on the east side of the north-south portion of the alley and the bowling alley on the west side of the north-south portion and the north side of the eastwest portion of the alley. There have been no protest to the application and notification of the application has been mailed, according to the notification area. Reversion of the public right-of-way to private property would be per dedication on the plats.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties, Planning Staff recommends approval to vacate the platted alley ROWs as described in the legal description, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time October 16, 2003 which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted alley ROWs and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted alley ROWs as recorded on the Ripstra Addition and the Bridwell Addition and described in the petition should be approved with conditions;
 - A. There is sewer south and running parallel to the eastwest alley; possible retention of the south 10-feet of the alley as utility easement, per the recommendation of the Public Works engineer.
 - B. There are franchised utilities in the alleys. The alleys need to be retained as easement until the utilities are relocated at the applicant's expense and to City Standards. When the utilities are relocated dedication of easement by separate instrument must be provided by the applicant to the franchised utilities.
 - C. Guarantee the closure of the alley return, or modify the alley to driveway standards.
 - D. Setbacks will remain in effect and move with the adjusted property lines.
 - E. If no protests are received, the vacation may proceed to the WCC after all conditions are completed.
 - F. Reversion rights would go to the abutting property owners; the eastwest portion of the alley to the owner's of the Ripstra Addition (recorded 06-14-1956) and the north-south portion of the alley to the Bridwell Addition (recorded 01-03-1951, now platted as the Scholfield Hatchett 3rd Addition).
 - G. Retain the north 20-feet of the alley running south-north between Lot 1, Scholfield Hatchett 3rd Addition and Lot 1, the Ripstra Addition as ROW-easement.
 - H. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - I. All improvements shall be according to City Standards.
 - J. Complete ZON2003-09, which applies to the eastern applicant's property.
 - K. Dedicate 10-feet of sidewalk easement along the Kellogg Drive frontage of Lot 1, Ripstra Addition.
 - L. Provide cross lot access agreement for recording with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- A. There is sewer south and running parallel to the eastwest alley; possible retention of the south 10-feet of the alley as utility easement, per the recommendation of the Public Works engineer.
- B. There are franchised utilities in the alleys. The alleys need to be retained as easement until the utilities are relocated at the applicant's expense and to City Standards. When the utilities are relocated dedication of easement by separate instrument must be provided by the applicant to the franchised utilities.
- C. Guarantee the closure of the alley return, or modify the alley to driveway standards.
- D. Setbacks will remain in effect and move with the adjusted property lines.
- E. If no protests are received, the vacation may proceed to the WCC after all conditions are completed.
- F. Reversion rights would go to the abutting property owners; the eastwest portion of the alley to the owner's of the Ripstra Addition (recorded 06-14-1956) and the north-south portion of the alley to the Bridwell Addition (recorded 01-03-1951 now platted as the Scholfield Hatchett 3rd Addition).
- G. Retain the north 20-feet of the alley running south-north between Lot 1, Scholfield Hatchett 3rd Addition and Lot 1, the Ripstra Addition as ROW-easement
- H. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- I. All improvements shall be according to City Standards.
- J. Complete ZON2003-09, which applies to the eastern applicant's property.
- K. Dedicate 10-feet of sidewalk easement along the Kellogg Drive frontage of Lot 1, Ripstra Addition.

L. Provide cross lot access agreement for recording with the Register of Deeds.

TERRY SMYTHE, Baughman Company We are asking that we vacate a dead end alley. It is a north/south alley that turns into an east/west alley that dead ends. The alley was not maintained very well because nobody knew it was back there and it doesn't go anywhere, that is why we want to vacate it. Last week at Subdivision we were requested that we dedicate, donate 10-foot of right-of-way off the front part of this property which is here on the map. So in order for us to acquire the property through the vacation that we have to give up additional property on the front of the property to get the vacation of the alley.

I don't believe there is any legal connectivity between us asking the alley to be vacated and the requirement for the additional 10 foot. Last week there was a discussion about why that was required and there was no clear definition of what the plans were, whether it was actually needed, whether it could be a utility easement, a sidewalk easement, an outright dedication or a continued dedication.

GAROFALO I am looking at Item K, It says dedication 10-feet of sidewalk easement.

SMYTHE I think after Subdivision Committee last week I think that is what was passed that they thought a 10-foot sidewalk easement would work. I didn't know a sidewalk and easement were the same thing myself. A 10-foot sidewalk easement be approved, now that passed at Subdivision I believe vote 5-1.

GAROFALO If this was passed would it not be required to be a sidewalk?

SMYTHE I don't know, I personally have not dealt with sidewalk easements, I have dealt with utility easements.

GAROFALO I assume when we pass these things that they are going to be what they say here.

SMYTHE I am going to ask the question what is the difference between a sidewalk easement, and a 10-foot dedication in which a sidewalk and utility can go? I don't understand.

MARNELL It would appear to me that the difference between the sidewalk easement and just dedicating that as right-of-way would be the difference in setting the property line for the property which would effect setbacks and the sidewalk easement would not.

SMYTHE That would make sense also it gives me the right to pay taxes on that 10 foot strip of ground.

WARREN Who is going to use a sidewalk on Kellogg Street?

DUNLAP Do you know if there is a sidewalk on the east?

SMYTHE I don't believe there is on the east I think there maybe one or to small section to the west.

DUNLAP Didn't we have a storm water run off drainage problem on the lot south of this? If you are granted the vacation aren't you responsible for taking care of that storm water run off?

SMYTHE The case that was heard on the lot south of this about a year ago there was questions about whether the owner to the west had a drainage problem. If you go out and look at that alley today the drainage problem that individual has is coming from the parking lots to the west. We have to take a look about how that is effected back there if we are given the alley to use and to reconstruct when they do the new parking lots, yes we will have to make sure that doesn't work. We can't effect the parking lot of the owner to the west.

DUNLAP You may even be solving a problem if you are granted this vacation.

SMYTHE Hopefully if we are going to redevelop this as a car lot and a dealership buildings we have to address what is occurring in the alley today. If he alley stays where it is and doesn't get reconstructed or the owner reconstructs it will be a much better shot a taking care of any of the drainage problem out there.

WARREN My rationale is going back to the same old thing. Supreme Court case that government entities may not use their permitting authority as a means to extract property concessions from landowners. It further went out and said that it could be an out and out plan of extortion and the thing I have to look at is what is the relationship between that alley vacation and the City taking the property out in front? I think the burden of proof of that is on the City to show that there is relationship. I think it is a illegal taking.

BISHOP My understanding that there is routinely a request for sidewalk easement, dedication with the intention that some point in the future that we will be installing sidewalks and there will be accessibility for pedestrian in all of our neighborhoods.

BARFIELD At Subdivision meeting that there was no relationship to this easement and that request for 10-foot it was also stated that any future development along this stretch of road would also be requested to participate in that 10-foot sidewalk right-of-way.

MOTION: To approve the application based on staff comments.

BARFIELD moved, **BISHOP** seconded the motion.

JOE LANG This is an issue that I am prepared to address on the legality and the taking. I only caution this particular issue I have not review it. I know the courts have frequently upheld the validity of the requirements of dedications for streets and sidewalks as being reasonable extractions. These things can be defended, whether or not this specific one has problems we will have to look at it some more.

MITCHELL Right-of-way acquisition for Kellogg is completed and if right-of-way on this side of Kellogg was needed for a sidewalk it should have been acquired at that time.

MCKAY Not only on this piece of property but all of it.

MITCHELL I won't support the motion.

MOTION FAILS 4-8. **BISHOP, GAROFALO, HERNANDEZ, BARFIELD** in favor.

MOTION: To approve Item 3-2 subject to staff recommendations and deleting Item K from the report.

WARREN moved, **DUNLAP** seconded the motion, and it carried (9-3) **BISHOP, BARFIELD, GAROFALO** opposed.

4a. Case No.: CUP2003-52 DP268 (Associated with ZON2003-50) – Holland Ventures, c/o George Holland; Robert H. & Joyce M. Jones; George Dimitropoulos Request The Creation of The Holland Commercial Community Unit Plan on property described as;

and

4b. Case No.: ZON2003-50 (Associated with CUP2003-52 DP268) –Holland Ventures, c/o George Holland; Robert H. & Joyce M. Jones; George Dimitropoulos Request Zone change from "SF-5" Single-Family Residential and "LC" Limited Commercial to "GC" General Commercial on property described as;

Lots 1, 2 and 3, Schniepp Addition, Wichita, Kansas, Sedgwick County, Kansas

AND

Lot 1, Payday Addition, Wichita, Sedgwick County, Kansas

AND

Lots 1, 2, 3, 4, 5, 6, and 7, Block D, Westport Addition, Sedgwick County, Kansas

AND

Beginning 1273 feet North of the Railroad Right-of-Way in the Southeast Quarter of Section 29, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence North 184 feet; thence West 330 feet; thence South 184 feet; thence East to the point of beginning, except that part taken for road.

AND

The South Half of a tract in the Southeast Quarter of Section 29, Township 27

South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 50 rods and 264 feet North of the Right-of-Way of the Wichita and Western Railroad on the East line of Section 29; thence North 368 feet; thence West 330 feet; thence South 368 feet; thence East 330 feet to the point of beginning. General Location:

Northwest corner of Kellogg and Tyler

MAPC DEFERRED 10-23-03

BACKGROUND: The applicant is requesting to create DP-268 Holland Commercial Community Unit Plan, which would be an approximately 12-acre development with eight parcels for commercial use. The applicant is also requesting a zoning change from "SF-5" Single-family Residential and "LC" Limited Commercial zoning to "GC" General Commercial for the CUP site; ZON2003-50.

The application area is bounded by road frontage on all its sides: Kellogg Drive on its south, Tyler Road on its east, Belview Avenue on its north, and Byron Avenue on its west. The south portion of the site, running parallel with Kellogg Drive, is zoned "LC" and "GC". This portion is platted as Lot 1, Block 1, the Payday Addition and Lots 1 & 2, Block 1, the Schniepp Addition. It has an active retail strip (restaurant and retail space) with frontage on both Tyler and Kellogg Drive. The rest of this south portion of the site is undeveloped. The west, northwestern and middle portion of the site has been platted as Lots 1-7, Block D, Westport Addition and is zoned "SF-5". Lots 1, 2, 6 & 7, along Byron & Belview Avenues, have single-family residences on them. Lot 5, on Byron, is not developed. Lots 3 & 4 (the middle portion along Belview) are not developed. The remainder of the site, south of the Tyler – Belview intersection, consists of two unplatted tracts. The corner tract is developed with a single-family residence, while the tract south of it is not developed. There is an undeveloped portion of Dubon Avenue, running parallel to Kellogg Drive, which separates the site's south portion along the Kellogg Drive frontage from most of the rest of the site. This portion of platted, undeveloped Dubon ends approximately 300-feet short of Tyler, up against the previously mentioned active retail strip. There is a 50-foot wide drainage easement running north – south running through the middle of the site.

Properties south of the site and across Kellogg Street/US 54 are zoned "GC" or "LI" Limited Industrial and are developed with fast food, retail strips, auto repair, motels-restaurants, self-storage and manufacturing (including Lear Jet, approximately 1/3 mile south) mixed with some vacant land. Lots to the west and north, across Bryon & Belview, are zoned "SF-5" Single-family Residential and developed as single-family residential and a church. Land to the east, across Tyler, is zoned "LC & "GC" and developed with a convenience store, a bank, shopping center and a Home Depot.

The CUP shows a maximum building coverage of 30%; the floor area ratio is 32%. Maximum height is 35 feet. The CUP also includes provisions for landscaping per the Landscape Ordinance of the City of Wichita. Lighting is per the UZC, shielded & directed downward onto the site and limited to 25 feet in height. Architectural, material, texture and color compatibility is proposed among the tracts. Requested signage exceeds standard City of Wichita signage requirements. The applicant proposes 4 points of access onto Kellogg Drive, 2 onto Tyler Road and 1 onto Belview Avenue. A Traffic Impact Study is required for this CUP. Issues addressed in the traffic study will include access control; dedications, turn lanes, accel/decel lanes and any improvements or

redesign applied to Belview, Tyler or Kellogg Drive will have to be approved by the Traffic Engineer. Contingent dedication of ROW along Tyler needs to be retained.

Uses proposed to be excluded are: adult entertainment; nightclub; tavern and drinking establishment; correctional placement residences, limited and general; and warehouse, self-storage.

CASE HISTORY: Plats associated with the site as recorded with the Register of Deeds include the Westport Addition, 05-28-1953, the Schniepp Addition, 05-29-1986 and the Payday Addition, 06-28-1996. A smaller portion of this site had been approved for a zone change, Z-3301, to "NR": Neighborhood Retail, subject to platting. The plat, SD99-42 had been filed but never finalized, thus the "NR" zoning has never been in place. Another application for a zone change, ZON2000-26, from "SF-6" Single-family Residential to "LC" was more recently filed, again for a portion of the site. This case was recommended for denial by Staff and deferred by MAPC on 07-13-2000. Issues with the case were the irregular shape of the site, abrupt intrusion into abutting single-family residential development, lack of a user or concept plan and the unknown impact the improvements on Kellogg/US-54 would have on the site. Since that time, the applicant has bought or has contract to purchase agreements with the abutting residential properties, which has given the site an additional 7 ½ acres and a square shaped site contained within four roads, which provide transition/space between the proposed "GC" site and the single-family residential north and west of the site. The improvements to Kellogg/US-54 are currently under way, thus the impact of those improvements are known and have been applied to abutting and adjacent properties. The applicant has still not identified any specific users, but, with the CUP, provided a plan for consideration.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5"	Single-family residential & church
SOUTH: "GC" & "LI"	Retail strip, motel with restaurant, fast food, self-storage, manufacturing, auto repair & vacant
EAST: "LC" & "GC"	Shopping center, restaurant, bank, Convenience store, building supply
WEST: "SF-5"	Single-family residential

PUBLIC SERVICES: Public sewer and water services can be extended to serve this site. Dubon Avenue is platted undeveloped ROW on the site and a sand and gravel residential road adjacent to it. Byron Avenue is a sand and gravel local residential street. Belview is an asphalt mat, two-lane collector without curb and guttering. Tyler is a five-lane curb and guttered arterial with nearly 18,000 vehicles per day. The Belview – Tyler intersection has a traffic light. The current Capital Improvement Project of Kellogg Street/US-54 will include improvements to the Kellogg - Tyler intersection. Improvements to the intersection will put Kellogg at-grade at Tyler and the adjacent frontage roads and include additional lanes, left turn lanes and cross access to the frontage roads from under Kellogg. Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The plan depicts this area as appropriate for "low density residential" and "commercial. The "low density residential" land use category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches, and similar uses found in such areas. Commercial locational guidelines indicate that commercial uses should be located: adjacent to arterials or major thoroughfares; in coordination with mass transit services, high-density residential, employment or other intensive uses; utilize site design features which limit noise, lighting and other activity so as to not adversely impact surrounding residential areas; and in compact clusters. Commercial uses should not feed traffic directly onto local residential streets. New "planned retail" zoning districts to replace current commercial areas should be developed as planned centers of various sizes as indicated in the locational guidelines. This area is identified on the *Area Treatment Classification Map* as a "conservation" area. Conservation areas which have sound structures and are able to maintain economic viability and which should be protected from decline by actions, which would insure continued stability.

The proposed C.U.P. is in conformance with the general recommendations of the Comprehensive Plan. The proposed C.U.P. provisions generally follow these objectives and guidelines. Recommendations for conformance with these policies are included in the next section.

RECOMMENDATION: The current proposed CUP, with its size and shape, and the finalization of the land and design for the Kellogg – US-54 proposed improvements have allowed the applicant to more fully address the issues of the previous zoning cases. A proposed 6foot masonry wall along the north and west sides of the property coupled with the landscaping and screening requirements of the UZC should ensure adequate screening of outdoor work and storage areas, trash dumpsters, and loading docks. A traffic impact study would be warranted to determine the scope of required transportation improvements since the site could generate more than 780 trips during the peak afternoon hour. Drainage concerns expressed by the residential neighborhood will be addressed by a required drainage study to be reviewed and approved by the Public Works Engineer.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

A. APPROVE the zone change (ZON2003-00050) to "GC" General Commercial subject to platting of the entire property within one year;

B. APPROVE the Community Unit Plan (DP-268), subject to the following conditions:

1. General Provisions #5 & #21 shall be amended and combined as follows: A Traffic Study is required for this CUP. Issues addressed in the traffic study will include access control; dedications, turn lanes, accel/decel lanes and any improvements or redesign applied to Belview, Tyler or Kellogg Drive will have to be approved by the Traffic Engineer. Contingent dedication of ROW along Tyler needs to be retained. Consideration will include the raised median strip scheduled to go on Tyler. If permitted, any access onto Belview must be designed so traffic from the site is not directed onto the adjacent residences but is lined up with another street, and no private drive openings are impacted or blocked.

2. General Provision #10 shall be amended as follows: "Trash receptacles shall have solid screening to hide them....."
3. General Provision #11 should be amended to indicate that rooftop equipment should also be screened from view from residential areas and adjoining rights-of-way.
4. General Provision #12 shall be amended to as follows: "Architectural Control – All buildings within the CUP shall share consistent exterior architectural character, form, color and texture as the existing buildings on the site, with vivid colors limited to accent.
5. General Provision #13 shall be amended to prohibit: search lights, banners, portable signs, moving signs and off-site signs. Signs shall be no taller than 25-feet"
6. General Provision #14 shall be amended as follows: " Total square footage allowed for signage per parcel, shall not exceed 80% of the frontage per parcel. No individual sign shall exceed 300 square feet."
7. Correct General Provision #18 as follows: take out reference to "Woodlawn" and insert "Tyler."
8. Thirty-five foot setbacks shall be established along the north and west sides of Parcel 1.
8. All property included within this C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
9. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-268) includes special conditions for development on this property.
10. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Zoning to the south and the east of the site is "LC" Limited Commercial or "GC" General Commercial while zoning on the remaining two sides are "SF-5" Single-family Residential. Uses mirror the zoning pattern in that retail and service commercial uses and residential uses exist adjacent to the site. Currently all non-residential zoning is confined to those parcels which have frontage along either an arterial or expressway, with the exception of the 2-unplatted "SF-5" tracts on the northeast corner of the site.
2. The suitability of the subject property for the uses to which it has been restricted: Without the unification of the site into a CUP, the "SF-5" zoned properties, not having frontage on an arterial, could continue as single-family residential development. The "SF-5" property with frontage on Tyler is not an appropriate site for residential and would be better suited for commercial development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed development "GC" zoning of the west and northern portions of the site of will have a potential negative effect on the residences to the north and west. Landscaping, screening and the traffic impact study will lessen the effects of the development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" and "commercial" development. The Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential. The continuing improvements to Kellogg – US-54 make this site, with the CUP overlay, suitable for commercial development. The CUP's intent is to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The CUP general provisions and staff recommendations are intended to achieve site design features to lessen the negative impact on the residential properties.
5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the recommendation of the traffic impact study. A drainage plan approved by the Public Works Engineer should improve drainage in the area, including the residential areas to the north.

DALE MILLER Planning staff, presented the staff report.

BISHOP I attended the DAB meeting. I was there on another matter, but I did sit through the discussion on this item.

GAROFALO Do we have a DAB memo?

MILLER The DAB voted to defer this to their next meeting to give the applicant and the neighborhood time to discuss their differences. I made a point to ask the Council member if he thought the DAB motion meant that it couldn't go to Planning Commission, and he said that is not what they intended to do. It will go to DAB before it goes to City Council.

WARREN On that aerial, are most of those buildings gone now?

MILLER Yes.

HENTZEN There is a house still standing, a house on Belview, just west of the drainage pipe.

MILLER Those will be removed.

HENTZEN I think there is one house on Tyler as well.

WARREN The only commercial is that one restaurant there?

HENTZEN There are a couple of other little business in the same building.

KIM EDGINGTON AM CONSULTING We brought this case to the Commission three years ago; it was six acres. The request of the Planning Commission, at that time, was that we hold off of on the zoning change until more of the property was consolidated, and until we had a unified development. We believe we have satisfied that request, and I think staff has recognized that in their report. It is about 12 acres now. There are some natural boundaries that demark the limits of the commercial development. Now we have some better idea of some of the improvements that are happening along Kellogg.

We did have a fairly lengthy discussion at the DAB meeting regarding this case. We have met with representatives of the neighborhood, and we understand there are several concerns that they have, and a lot of those issues that will need to be addressed at the time of platting regarding drainage. There is a platted drainage easement that runs through this property. The property owner has acquired all this property. It used to be an orchard. He has widened and deepened the channel for drainage. I drove the site this morning and it is completely free for flowage in there. There has been some fill on other portions on the site, but nothing within that drainage easement area. Staff has pointed out well that this does meet the spirit and intent of Comprehensive Plan. The General Commercial zoning that we requested was for the possible intent of locating a vehicle dealership on here. The Comprehensive Plan also clearly states that Kellogg is the appropriate location for that type of use. There is one very similarly situated just to the west, the Davis Moore dealership. It backs up directly adjacent to residential and it does not have the benefit of the street right-of-way separating that.

There are several requests from the neighborhood that we place additional restrictions on this property. We have met with the neighbors, and we have agreed to several of those. But there are a number of those that we would ask you to reconsider because a number of the uses that have been requested to be deleted from this property are in fact allowed in Limited Commercial, so it is not a function of them being allowed in General Commercial. We have agreed to accommodate several of those requests. For instance, we will bump up the landscaping along Byron and along Belview. We have agreed to do 1 1/2 times the requirement in a 20-foot landscaped planting strip, and that all be evergreen planting. That was at the request of the neighborhood. They would prefer to see evergreens planted rather than shade trees for year-round vegetation.

We have also agreed to remove automotive vocational schools, and vehicle storage yards. This is very similar to a lot of developments in the western portion of Wichita. Some of these are more intensive because they lack the street buffering. Again, we do not have a definite end user for this property, however the uses that it has been restricted to we would ask for the flexibility of those. For instance, it is a highly desirable site for a grocery store. There are numerous grocery stores, one at 13th & Tyler, a Dillons and Albertsons, that both directly abut to residential developments, and are separated by a 6 foot masonry wall. Same with the Dillons at 21st and Maize, and developments like Home Depot, and again the Davis Moore out west.

Some of the other issues that will be brought up; we have requested a service entrance and exit along Belview, and we are requesting that be a right out only so that any traffic coming out of the project would be directed to the east on Belview, and that would be curved and directed, and that is to be able to use this service light for delivery vehicles needing entrance and exit from the property. We understand the necessity to prevent any traffic going back to the west. I think right now there are a lot of problems with cut through traffic here because of the extensive construction going on at Kellogg. I think these people in the neighborhood are feeling the affects of that unfortunately. There is one through street to the west here, and people can cut back on that. But that is really not a function of anything that is going on or will be going on here. We have set this project up so the access is along Kellogg and Tyler.

We agree with staff recommendations for approval, and we think they have summarized the intent of this project, and they have recognized that it is completely in conformance with the Comprehensive Plan, and that it integrates the design features such as the additional landscaping and lighting.

MITCHELL Is there enough right-of-way on Belview and Byron to pave those to City standards?

EDGINGTON I don't know about the west side of Byron and on the north. We have no problem when we go through the platting process that we may be requested to dedicate additional right-of-way to do so.

MITCHELL Are you planning to do the drainage in the storm sewer?

EDGINGTON Yes we are. That has been the intent all along. This project will have a storm water drainage system.

MITCHELL And collect the water from upstream?

EDGINGTON Right.

BISHOP It mentions in the staff report a proposed 6foot masonry wall. Are you in the discussions or do you see there is a possibility of an 8-foot wall?

EDGINGTON I don't think an 8-foot wall is out of the realm of possibility, however we don't see the justification in eliminating a whole laundry list of uses and then constructing an 8-foot wall. It seems to be an either/or situation from our perspective. In the

green folder there is a listing of uses that the neighborhood is requesting to be eliminated from the project. Again, the majority of those uses are not a function of this property even being allowed "GC"; those are mainly Limited Commercial allowed uses.

GAROFALO You do or do not agree with eliminating Condition H & I?

EDGINGTON We would agree to eliminate those uses. We would prohibit H & I. The rest of those, A -J, we would ask to retain as allowed uses.

BOB KAPLAN, Kaplan, McMillan and Harris, I was asked by a number of the neighbors to appear on their behalf, and to assist them with their concerns with this development. I do not represent all of the neighbors nor do I speak for all of the folks here. I do however represent and speak for a nucleus committee that did retain me, and that I do represent.

At the DAB meeting, I would say 35-40 people were present. All those who spoke, spoke in opposition of this proposal. In my meetings with Kim I tried to take a middle ground on this project. If you look at the C.U.P., Parcels 2, 3, 4, 5, 6, 7, & 8 are commercial. This is an arterial intersection of Highway 54 and Tyler, and we will live with your approval of Parcels 2-8 just as the applicant has requested them, and as staff has recommended them.

Parcel 1 is an entirely different matter, and that is where our focus is, and the list that you have, that I provided on the additional prohibited uses that the neighborhood is asking for are applicable only to Parcel 1. I am surprised at staff's suggestion that we can back into a single-family residential neighborhood approximately 7 acres of General Commercial with all the uses that are allowed in the General Commercial district. I think it is entirely inappropriate. Belview is asphalt mat, and Bryon is sand and gravel.

We have no buffering. We have no compatibility. What I did in an effort to arrive at accommodation, I called Kim, and we sat down with the broker and the neighborhood, and we went through this. We went along with Parcel 2-8. We will go along with "GC" for Parcel 1, but give us the restrictions that we are asking for; give us access control on Belview.

On the exceptions, we did not arbitrarily decide that we don't want this, or that each and every one of those delineated uses that we have included in there; there is a rationale, and there is an objective basis for asking that those be prohibited.

We do not have City service water out there. These folks are on domestic wells. For well water, they have concerns about the environmental impact of this development. We have some concerns about automobile and vehicle uses, and about storage uses; things that have the capacity to pollute.

There are reasons for this list of restrictions that the neighborhood proposes, for instance, 24-hour retail is inappropriate in the front yard of these homes.

On "hotel" and "motel", I was told by Kim when we came over here that we can take "hotel" and "motel" off the list of restrictions. We will be okay with it. We simply ask that the glazing be oriented away from the north and the west, in other words, no windows on the north or west elevation. Kim just mentioned something about loud speakers, and I heard Kim say that she would accommodate us in some fashion, either a decibel level or a distance limitation. But the access issue is a major issue with the neighborhood.

HENTZEN Mr. Kaplan, you mentioned the homes are on well water. Are these homes in the City limits? How long ago, do you know?

KAPLAN It has been some time 1970 I am hearing. I am saying those capacity to pollute we would prefer not to have on the site as long as we are on well water. I think they were promised City water a long time ago. We don't want automobile uses that have the capacity to pollute the groundwater.

HENTZEN In the staff report, on page 3 of the staff report, you have uses proposed to be excluded are: adult entertainment; nightclub; tavern and drinking establishment; correctional placement residences, limited and general; and warehouse, self-storage. My question is why do we have almost every C.U.P. that comes up do you want to exclude that?

MILLER That is the applicant's list.

HENTZEN Another item on page 5, item 4, "Architectural Control – All buildings within the CUP shall share consistent exterior architectural character, form, color and texture as the existing buildings on the site, with vivid colors limited to accent. Where do we get the authority for Architectural Control?

MILLER We have been doing it for decades.

HENTZEN That building that was there was an old crappy piece of property, and they got somebody to spend some money on it, and open a business there. Are we forcing the development to be compatible with that building?

MILLER That building has been redone, and it is a very nice looking building. Good planning practice would indicate that developments this size, and this location, that they should share uniform development characteristic so it looks like they belong together; and are not a hodge-podge of things built over time, so they don't blend.

TAPE CHANGE

HENTZEN I don't understand the Architectural Control on all the C.U.P.'s.

MILLER We have been doing this for decades. That has been a standard since I have been doing these.

CHARLES MORGAN, 1227 S. Keith, Wichita, KS 67209, I am here to oppose the access on Belview. I believe it is an abrupt intrusion into abutting single-family development. It will increase traffic into the street, into this residential neighborhood. No development signs were posted to the north and west of this area, which abuts the residential neighborhood concerning this zoning matter. That drainage ditch, as of this morning, they have not touched it.

MARGARET CARTWRIGHT, 8900 Belview, Wichita, KS 67209, Wichita annexed our property in 1970. From 1969-1998 there was no activity on that property except productive farming. When they narrowed the neck down at Kellogg we started having floods because they did not clear the dirt that they illegally dumped. I am sending pictures around of my home for you to review, because my home is lower because Mr. Holland has put in so much dumping of all kinds of materials, and he has also elevated the ditch because he hasn't maintained it. This last storm, automobiles and cars were floating into houses on Tyler. My house was completely enveloped in water. That is because Mr. Holland allowed dirt to get in the ditch, and hadn't been maintaining it. I can't sell my house to anybody. There have been so many infractions in the law, the state law, in creating the higher elevation of land, and he plans to elevate it even higher. He has been dumping material and hiding the material that he is dumping. We are concerned about the exit on Belview. Because we are at Kellogg and Callahan, we see the traffic. The church traffic is there every day. We have seen truck after truck piled high with material to dump.

DEBRA DEGRANT, 1229 S. Byron, Wichita, KS 67209, We had a large turn out at the DAB meeting. We realize the property is going to be developed. We have problems with the environmental impact, and the traffic in the area. The drainage is a public works drainage. By the way, it has not been made at 50 foot wide; it is much, much, higher. When the fill dirt was brought in, it covered the culvert like grading so the water can't get down to the storm sewers that way. The ground is much lower in the center there. We weren't too picky about the uses because they will all have the basic uses of the environmental and health issues. There are a lot of fumes and vapors that can come with all of these uses. I am uncomfortable with Holland Commercial for maintaining and following things up to Code now, because to this point, we have not had that response from him. The flooding has been brought to his attention. We talked to my home insurance agent, they did say the more people are purchasing the government flood insurance, and that will send up a red flag in the neighborhood, and then we will all pay higher rates. I spoke to Dale Miller and Scott Knebel last week, and they did not see the need for access on Belview. I have two letters, for the record, from homeowners that were not able to come today.

HENTZEN I live west of Seville, right across from the nursing home. I will tell you that I have been on the Homeowners Association, and what their plans are for the Kellogg phase is to bring Seville down to Kellogg now, but you will only be able to turn right and you will go out across the Cowskin and then go under the bridge and go on the side and come back to Wichita.

BART TYSON, 609 S. Byron, Wichita, KS 67209, I have not heard too much addressed about the illegal dumping that has been going on there. Right now my daughter and I ride our bikes in the summer. I run a lot on those streets, and I have seen big trucks coming down through. Every morning I got to go to work, and I got to get out at the light at Belview. Traffic backs up, and you have to wait, it takes a long time to get in and out at the corner of Belview and Tyler. Those streets are not very wide. I don't see how we can get trucks in and out of there. The groundwater is a concern to me because I am on well. Also, I do not want to see more contamination than what could possibly already be there, so I am concerned about what will be going in there, and who is going to be moving in there.

MCKAY Are you hooked onto public sewer?

TYSON Yes.

BARBARA BARBOUR, 1355 S. Keith, Wichita, KS 67209, I have lived here for 36 years. I am concerned about the amount of traffic, and the congestion at Tyler and Belview, but there are many times we sit through a stop light three or four times waiting for access onto Tyler Rd. It forces the residences to take another one of the other roads that connect to Maple. I am reluctant to see that Parcel 1 zoned as "General Commercial" without having the 8-foot wall. The drainage ditch has never been maintained by the City; if we don't dig them out nobody does.

JOHN EATON, 1207 S. Bryon, Wichita, KS 67209 I am opposed to this development, as well as from my location everything that goes on at Parcel 1 will be in my front yard. A car lot or a sports bar would be obtrusive. I have some pictures to hand out. This is a view behind a Wal-Mart on west Kellogg, it has a six-foot wall with landscaping, and I believe the building is around 35 feet high. So naturally a car dealership that stays open until 9-10 p.m. in the evening would be obtrusive.

KATHLEEN BOOHER, 651 S. Callahan, Wichita, KS 67209 I am opposed as well, and all of the dumping close to my home, and I have concern about the hazardous materials and such. I was here 3 years ago when they tried to rezone that area. They were to work with the neighborhood, and they have not done that. My home had not flooded prior to Mr. Holland's purchase of this property, and it flooded 3 feet from my house, and it is because the drainage in the ditch is not proper.

KIM EDGINGTON The Comprehensive Plan does say that this is an entirely appropriate area for commercial uses, and the commercial uses that we have requested. We would be happy to leave the mature trees on the lot now. We have agreed to increase the landscaping, and have a 20-foot landscape buffer along there to enhance the separation. The restrictions being asked for are mostly Limited Commercial allowed uses. This entire site will be required to provide storm water drainage. This site is not going to be draining into the groundwater.

Any kind of vehicle repair would all be required to be indoors. That is a general recommendation, and we have no problem with that. The access along Belview would be a restricted turn for the purpose of service vehicles and staff has supported that access, and we are going to be required to do traffic study impact study, and it may indicate and recommend against any opening on Belview and may not be allowed. We would agree to an 8-foot wall, however we fail to see any justification for building a 8-foot wall if we also have to remove quite a lot of uses that would be allowed even in the "Limited Commercial" zoning. The drainage issues have been caused from the Kellogg expansion, and not what is being developed on this property. The flooding is bad in west Wichita, and there was an article, and it was headline news in the Wichita Eagle in June 2003. We believe that we have worked with the neighbors.

BARFIELD Does Mr. Holland have an operation on this location currently?

EDGINGTON He has his offices in that strip mall that is located here.

BARFIELD Can you point to where you would propose the opening on Belview.

EDGINGTON Staff has requested that it line up with an existing street, and that it not be in conflict with any other drives. So the most likely place would be lined up with Callahan, which puts it 265 feet from the intersection.

BARFIELD That would be as proposed, a right-out only?

EDGINGTON Correct, so that all traffic would be directed to this signal, and that is why we find that necessary; so that service vehicles will be able to utilize that traffic signal to make deliveries into and out of the property.

BARFIELD Would service vehicles be the big trucks that we have been hearing about that Mr. Holland owns?

EDGINGTON At this point he does not have his storage yard for vehicles and his main operations are not located on this site. It is just his offices.

BARFIELD We have heard several neighbor's complain about big trucks coming in and dumping.

EDGINGTON There has been trucks come in here and put fill material, and all of that is perfectly harmless. It is broken up concrete and stuff that will be used as base fill material for this site because there are parts of it that will need to be built up.

WARREN As I understand, Parcels 2-8 are zoned "LC" or are they are "GC"?

EDGINGTON We have asked for "GC" on the entire property which staff has supported.

WARREN I am concerned about this Item #4 which has to do with architectural control, and I am not in favor of it. I don't think it is necessary to restrict the architectural development.

EDGINGTON We included in our C.U.P. that all buildings on the property would share consistent architectural materials. However we would prefer that they not have to match the building that is on there because it is very likely in the future that building will come down. Our building will be much nicer than that.

We have proposed on the C.U.P. that "All buildings shall have consistent exterior building material with consistent architectural character, form, color, and texture with vivid colors limited to accent."

WARREN You feel that would not tie you to any particular architectural styling?

EDGINGTON That wouldn't require them that all buildings look like where the Long Branch supper club is.

WARREN So your recommendation would be if approved would be to delete Item 4 of those provisions?

EDGINGTON Right, to keep the language on the C.U.P. submitted by us.

WARREN Are you ready to commit to the 8-foot wall?

EDGINGTON With a clarification, that being we are allowed the uses that we are requesting. Because again, an 8-foot wall and eliminating 8-10 limited commercial uses is not justified.

BARFIELD Back to Item #4, if you just took out the wording here "as the existing buildings on the site" wouldn't that work?

EDGINGTON Yes that would be fine if you just struck that phrase "as the existing buildings on the site".

BISHOP I have driven by this site, and I am concerned about the fill that you have referred to. It looks as if asphalt was dumped. Can you guarantee us that all of the fill that was done was legally conducted, and there is not a pollution problem existing there that would need remediation before any future development happens?

EDGINGTON We will have to perform a Phase II Environmental Study of the entire property, and that will confirm that there is nothing hazardous on the property, and that if there is, we will have to go through full remediation.

GAROFALO You are still wanting access onto Belview?

EDGINGTON We would ask that the Commission approve the access on Belview. Again, it will be subject to the results of the Traffic Impact Study. Depending on the results of that study, it is possible that the study could recommend against any access on Belview.

GAROFALO Dale, do you recall on the Home Depot over to the east and the car dealership, I recall that we had quite a discussion about access to the street to the north.

MILLER I didn't think that there was any access to the north on either one of those. There is no street; they abut the lots directly, no street in between. There are no streets that run east/west.

MCKAY There is a cul-de-sac.

DUNLAP When Kellogg construction is completed, and looking at the C.U.P. layout we have an access east out of this unit. Will we be able to go north on Tyler from that driveway?

MILLER No, I think there will probably be a median there.

DUNLAP So the only way you can get out of here and go north on Tyler would be using Belview to get to the stop light?

MILLER Right, because of the stop light at Belview.

BARFIELD What are we considering a vehicle storage yard?

EDGINGTON We agreed to eliminate that.

MILLER By code definition the vehicle is stored if it sits still for more than 72 hours.

WARREN How many of these things on this list that Bob Kaplan provided are now agreed?

MILLER I have not been involved in the discussions between Mr. Kaplan and Kim Edgington at all, so other than what you are hearing here, I am hearing it for the first time too.

EDGINGTON Just to clarify. I think Mr. Kaplan said that his clients would agree to remove Item D, and then we agreed our client would remove Items H & I.

WARREN That includes A, B, C, E, & F.

EDGINGTON We would make Items H & I prohibited uses in the C.U.P.

MARNELL Did they remove their objection to Item G?

EDGINGTON No, they have removed their objection to Item D.

BISHOP What about Item E and Item G, both seemed to me to have an element of vehicle storage associated with them.

MILLER In the past, you have had some pawnshops that when they take a vehicle in on pawn, and nobody comes back to redeem them. They get stuck with them and then they do have a storage problem. If it is in terms of an auto dealer where they are selling vehicles, then storage doesn't apply. It is only in a situation where they are parking the vehicles there and there is no other related use that dictates the storage issue. But, if it is a car dealership or something that is related to selling cars, then storage doesn't become an issue typically.

BISHOP So if we took pawnshops out as an excluded use, vehicles could not be routinely stored.

EDGINGTON Right, because we have prohibited a vehicle storage yard.

BISHOP Then the issue comes back into play under "vehicle and equipment sales" and "vehicle repair", what kind of storage is associated with that?

EDGINGTON It is parking of vehicles, and it is not considered vehicle storage because it is directly related to the business being operated on the site. Any vehicle repair is required to be conducted indoors.

BISHOP So, it would only be if the vehicles would be offered for sale then storage would come into play?

EDGINGTON Right.

GAROFALO It has been suggested that this be deferred for a little bit and allow your client or yourself to get together with the neighborhood and iron out the things that there is an agreement on now. Would that be a feasible possibility?

EDGINGTON I don't know what we will be accomplishing with that. I have met with my client, and we have gone down this list item by item, and we have worked out what we can agree to.

GAROFALO So you don't think, at this point, in trying to deal with the neighborhood concerns?

EDGINGTON We have accommodated as many of the requests that we can. We are at an impasse.

BARFIELD Item K, would you have a problem eliminating that?

EDGINGTON No, we don't have a problem eliminating loudspeaker system, on Parcel 1. We would ask that still be allowed on Parcel 2-8, and I think the neighbors are fine with that. We don't foresee that Parcel 1 would be used for any fast food type business, and that would be conducted on the out parcels along Kellogg or Tyler.

TAPE change

GAROFALO On the staff report, conditions of approval, the only change that you are suggesting would be the six or seven words in Condition #4.

EDGINGTON Just to remove the phrase "as the existing buildings on the site" on Condition #4, otherwise we are in complete agreement with staff comments. Staff is saying they are agreeable to remove that phrase.

WARREN I would like to try and bring this to some kind of closure. I am going to go through this list, and maybe suggest to the applicant items that they would agree to in their C.U.P. that are not there now. Item B. animal kennels, Item D. would be modification of that hotel/motel, Item F. would be a restriction in the C.U.P., Item H automotive vocational schools, Item I. vehicle storage yards, Item K. elimination of loud speaker systems.

EDGINGTON I was just talking to Mr. Kaplan, the Items that we can agree to exclude at this point are Items F. outdoor entertainment facilities, Item H. automotive vocational schools, Item I. vehicle storage yards, and Item K. eliminating loud speaker systems.

WARREN What about Item B? I don't think you want "animal kennels" out there.

EDGINGTON We would request to keep in "veterinarian care".

WARREN I don't think that would eliminate the kennels.

EDGINGTON We would agree to eliminate "animal kennels."

WARREN So that would leave in dispute Item G, basically?

EDGINGTON That leaves Item A, B, C, E, and G or part of Item B.

MCKAY Kim, why would you not want to eliminate Item A?

EDGINGTON Because I think in Item A. exclude "social service and rehabilitation facilities", what they are requesting to eliminate are government offices, that was my understanding based on the conversations we had with Mr. Kaplan.

MCKAY That is not what I read into a neighborhood rehabilitation center.

EDGINGTON In the language in the C.U.P. we have already eliminated that. We don't have a problem with eliminating any kind of drug rehabilitation, but however we want to make sure that we do keep "government offices", and "government services" as an allowed use. It is a matter of the language and the wording. There was a concern about the type of clientele that may be brought in by "government office" and we don't feel that is a valid concern.

WARREN What if you just took out "social services"?

MCKAY Leave out "rehabilitation facilities" that is what you want out.

EDGINGTON That is fine. We would agree to exclude "rehabilitation facilities", so that we could have social service offices.

BISHOP Could you point to me, in the staff report, where the uses that you are referring to are, because I am not seeing these.

EDGINGTON On the C.U.P. under the parcel description.

MITCHELL As one who has for years driven across lots in the times that you weren't suppose to drive from one commercial lot to the other, and exited commercial and high traffic store areas, such as Wal-Mart, through the truck entrance and exit. I can tell you that I will not support anything that would permit an exit onto Belview because I know people will find that route.

EDGINGTON We can understand that, but for us that is not a make or break issue. We understand there are going to be people who are going to break those rules, and if we aren't allowed access along Belview then we will have to make it work without that.

BARFIELD Will that include Byron?

EDGINGTON We already have complete access control on Byron. We are not asking for any access on Byron. We are still required to do the traffic study and we would agree with Item 1 and Item 2 and take out part of Item A and part of Item B, they have agreed to take out Item D and take out Item F, and take out Item H, I, and K.

EDGINGTON We are talking about this list that was provided by Mr. Kaplan.

MOTION: To approve the application with the following changes and conditions: Parcel 1 we will eliminate, Item 1 remove the Belview Avenue exit, Item A remove the wording rehabilitation facilities, Item B remove the wording animal kennels, Item D, Item F, Item H, and Item K removal.

BARFIELD moved.

EDGINGTON We need to clarify whether this is an exclusive or inclusive list.

BISHOP I think you need to revise...

MARNELL These will be restrictions.

BISHOP So you want to leave in "rehabilitation facilities" as a restriction.

MCKAY I would like to, instead of us go through here, say leave this in, take this out, just make your modifications to be approved based upon commentary by the staff and the applicant.

EDGINGTON I can basically reiterate what we have agreed to do, and what we have agreed to prohibit. We agree to the following:

Condition #1 Total access control on Byron and Belview Avenue

Condition #2 Landscaping to be one and one-half times the landscape plan requirements and we also want to add that be Evergreen Vegetation and that mature existing landscaping be left in place.

Condition #4 we agree to prohibit on Parcel 1 the following uses

A. Rehabilitation facilities

B. Animal kennels

F. Outdoor entertainment facilities

H. Automotive vocation schools

I. Vehicle storage yards

K. Eliminating loud speakers systems on Parcel 1

MOTION: To approve the application and staff comments with the following modification to prohibit the following on Parcel 1 only.

BARFIELD moved, **DUNLAP** seconded the motion.

Condition #1: Total access control on Byron and Belview Avenue

Condition #2: Landscaping to be one and one-half times the landscape plan requirements, and we also want to add that be evergreen vegetation, and that mature existing landscaping be left in place.

Condition #4: Prohibit on Parcel 1 the following uses:

A. Rehabilitation facilities

B. Animal kennels

F. Outdoor entertainment facilities

H. Automotive vocation schools

I. Vehicle storage yards

K. Eliminating loud speakers systems

COULTER What about the masonry screening wall on Condition #3?

GAROFALO What about the Item in the staff report?

EDGINGTON Subject to staff comments, and they have agreed to the modification in the language in #4.

BISHOP I am not going to support the motion. I think we are getting these developments right up against residential neighborhoods. We are not developing a practice or idea on how to better buffer them other than a fence, and in my opinion a wall even at 8 feet is inadequate. I am concerned about the dumping that has gone on there, and the environmental impact.

MOTION CARRIED: 10-1 **BISHOP** opposed.

5. **Case No.: ZON2003-54** – Emprise Bank, Sunset Holdings LLC; Baughman Company (Russ Ewy) / Moris land Evans Brock & Kennedy (Don Schrag) Request Amendment to Protective Overlay #17 to revise signage restrictions, access controls, and architectural control on property described as;

Generally located At the northeast corner of Maple and 135th Street West

BACKGROUND: The application area is the 3.53 acres located at the northeast corner of Maple and 135th Street West. The applicant is seeking to amend Protective Overlay #17 to: (1) revise signage restrictions; (2) amend access controls and (3) revise architectural consistency requirements. If this request is approved, the applicant will revise boundaries of the existing lots. These amendments are requested in order to facilitate anticipated development of a bank and a drug store on this site.

Signage

Existing PO # 17 Condition: Condition 1A prohibited flashing signage (except for time and temperature and public service messages). Condition 1E limited signage for the entire site to three signs displaying a combined 192 square feet as follows: Lot 1, along Maple, one 96 square foot sign at 20 feet in height; Lot 1, along 135th Street, one 48 square foot sign at 8 feet in height and Lot 2, one 48 square foot sign at 8 in height. Condition 1F restricted building signs for buildings located within 150 feet of the arterial streets to the "NR" Neighborhood Retail District standards (32 square feet in area for a single tenant sign, up to 96 square feet for multi-tenant sites, 30 feet maximum height and limited to one sign per building elevation for each major user provided the total building signage does not exceed 32 square feet, provided the building elevation has street frontage, is adjacent to nonresidential zoning or has 150 feet of area between the façade and residential zoning and lighting is limited to indirect or internal illumination with white light only and without flashing or moving images), and no signs shall face the residential area to the east. All ground signs are to be monument type signs.

Applicant's request: Amend Condition 1A to clarify that electronic message boards are a permitted sign type. Modify Condition 1E to permit 246 square feet of signage as follows: one 75 square foot sign allocated to Parcel 2 along 135th Street; one 75 square foot sign allocated to Parcel 2 along Maple and one 96 square foot sign allocated to Parcel 1 to be located along Maple. Both 75 square foot signs are limited to 18 feet in height and the 96 square foot sign is limited to 10 feet in height. Revise Condition 1F to permit building signs in accordance with the standards of the "LC" Limited Commercial District (no more than three signs for each business on each building elevation having street frontage or a parking area of 150 feet or more; signage area is limited to no more than 20% of each building area or more than 400 square feet in area, nor taller than 30 feet), except the aggregate signage for each elevation shall not exceed 110 square feet in area. No building sign, except for directional signs, shall face the residential area to the east.

Access Controls

Existing PO # 17 Condition: Condition 3 indicates that both Maple and 135th Street West are limited to two points of access each.

Applicant's request: Modify Condition 3 to allow one full movement joint opening along Maple to be shared between Parcels 1 and 2, one full movement opening along Maple for Parcel 2, and one full movement opening along 135th Street to be shared between Parcels 1 and 2 via an access easement.

Architectural Consistency

Existing PO # 17 Condition: All building in Lot 2 shall be uniform in architectural character, color, texture and the same predominate exterior building materials. Building walls and roofs must have predominately earth-tone colors, with vivid colors limited to incidental accent, and must employ materials similar to surrounding residential areas. Metal shall not be permitted as a predominate exterior building material for any building on the site.

Applicant's request: Revise Condition 11 to require all buildings within a parcel to share uniform architectural character, color, texture and have the same predominate exterior building material as the other buildings located in such parcel. Building walls and roofs must have predominately earth toned colors, with vivid colors limited to incidental accent. Metal shall not be permitted as a predominate exterior building material for any building within either parcel.

Surrounding properties are developing in the typical land use pattern seen at the intersection of two section line, arterial streets – commercial and office zoning and uses on or near the corners with residential zoning and uses removed from the corner lots. The two "LC" zoned corners located south of Maple have restrictions that limit ground sign size and height. The southeast corner is a 12-acre site that is restricted to 240 square feet of ground/pole signage with sign heights ranging from 8 to 20 feet. The southwest corner is a six-acre site that is restricted to 288 square feet of ground/pole signage up to 20 feet in height. The northwest corner is zoned "GO" General Office and is restricted to "GO" ground/pole signage (32 square feet single tenant, up to 96 square feet for multi-tenant sites, 22 feet in height) by the sign code. All ground or pole signs on all three sites are to be monument type signs. On the two commercial sites, building signs are limited to "NR" Neighborhood Retail standards.

CASE HISTORY: In 1997, this site was approved for "LC" Limited Commercial zoning subject to Protective Overlay (PO) #17 that contained 19 conditions.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single family Residential; residential
SOUTH: "LC" Limited Commercial; vacant, but platted for commercial uses
EAST: "SF-5" Single family Residential; residential
WEST: "GO" General Office; office, vacant

PUBLIC SERVICES: Public services are available, and both Maple and 135th Street are paved arterial streets.

CONFORMANCE TO PLANS/POLICIES: This site is covered by the City Council adopted "Far West Side Commercial Development Policy" that has policies seek to limit the scale of development at designated intersections. The policy also contains a statement that freestanding signs should be low, small and monument-style, and overall signage which is restrained in extent. The MAPC has not endorsed this policy.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following amended conditions:

1. Amend Condition 1A to clarify that electronic message boards are a permitted sign type.
2. Modify Condition 1E to permit 246 square feet of pole/ground signage as follows: one 75 square foot sign allocated to Parcel 2 along 135th Street; one 75 square foot sign allocated to Parcel 2 along Maple and one 96 square foot sign allocated to Parcel 1 to be located along Maple. Both 75 square foot signs are limited to 18 feet in height and the 96 square foot sign is limited to 10 feet in height. All ground/pole signs are to be monument type signs.
3. Revise Condition 1F to permit Lot 1 to have building signs in accordance with the standards of the "LC" Limited Commercial District (no more than three signs for each business on each building elevation having street frontage or a parking area of 150 feet or more; signage area is limited to no more than 20% of each building area or more than 400 square feet in area, nor taller than 30 feet), except the aggregate signage for each elevation shall not exceed 110 square feet in area. No building sign, except for directional signs, shall face the residential area to the east.
4. Building signage on Lot 2 shall be that permitted in the "LC" Limited Commercial district except that the aggregate signage for each elevation is limited to 75 square feet, and no building signs, except directional signs, shall face east.)

5. Modify Condition 3 to allow one full movement joint opening along Maple to be shared between Parcels 1 and 2, one full movement opening along Maple for Parcel 2, and one full movement opening along 135th Street to be shared between Parcels 1 and 2 via an access easement.
6. Revise Condition 11 to require all buildings within a parcel to share uniform architectural character, color, texture and have the same predominate exterior building material as the other buildings located in such parcel. Building walls and roofs must have predominately earth toned colors, with vivid colors limited to incidental accent. Metal shall not be permitted as a predominate exterior building material for any building within either parcel.
7. None of these amendments shall become effective unless, within 90 days following final approval, the applicant elects to dedicate, by separate instrument, the access controls recommended above.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is the typical mix of commercial, office and residential uses and zoning that are found in the larger area surrounding the intersection of two arterials. The area is still developing, as some of these tracts in the general area are still undeveloped.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as currently restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed modifications are not that different from what is allowed on the other "Limited Commercial" zoned corners. The tract to the south is permitted 240 square feet of ground signage; the tract to the southwest is permitted 288 square feet, while the applicant is requesting 246 square feet of ground signage. The building signage request is larger than the "NR" standard applied to the other two commercial sites. However, the applicant has an identified user with identified signage needs that may make a deviation from the current standard appropriate. Staff recommendation to restrict the change in building signage to Lot 1 should minimize any impacts to nearby residential areas. The change in access controls should not impact adjacent properties considering that they are going from four points of access to three and two of the three openings are to be joint openings. The change in architectural controls should not impact adjacent properties, as the site is small (3.5 acres) compared to the other two commercial sites (6 acres and 12 acres) at this intersection that limits the number of buildings that could be built on the tract.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: With the exception of the building signage request, the proposals are consistent with Council adopted policies. The building signage request is somewhat larger than what has been allowed on the other "LC" corners employing the Far West Commercial Development Policy, however there are identified users with know signage needs.
5. Impact of the proposed development on community facilities: None.

DALE MILLER I have handed out a revised staff report, Condition #3, Building signage on Lot 2 shall be that permitted in the "LC" Limited Commercial district except that the aggregate signage for each elevation is limited to 75 square feet, and no building signs, except directional signs, shall face east.

On the findings #3, remove the sentence that states Staff recommendation to restrict the change in building signage to Lot 1 should minimize any impacts to nearby residential areas.

GAROFALO There is no change in the access points?

MILLER Yes, this includes changes in the access points but they are agreed upon by the Traffic Engineer and he is comfortable with the new locations. It is one less.

MOTION: To approve item #5 as amended subject to staff recommendation.

MCKAY moved, **COULTER** seconded the motion, and it carried (12-0).

6. **Case No.: CON2003-40** – James Osterlung Request Conditional Use for a Bed and Breakfast on property zoned "B" Multi-family Residential on property described as;

The North 22 feet of Lot 152, all of Lots 154 and 156, and the South 3/4ths of Lot 158, on Market Street, in Hyde & Ferrell's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.
Generally located Northeast of the 10th Street – Market intersection

BACKGROUND: The applicant is requesting a Conditional Use to permit a Bed and Breakfast to be located in a "B" Multi-family residential zoning district. The application area is the north 22-feet of Lot 152, all of Lots 154 & 156, and the south ¾ of Lot 158, Hyde & Ferrell's Addition, 1018 North Market. The site is currently developed as a 3-story single-family residence. According to the Unified Zoning Code (UZC), a Bed and Breakfast is an owner-occupied or manager-occupied residential structure that provides rooms for temporary lodging or lodging and meals for not more than 15 transient guests on a paying basis. A transient guest is a person who occupies a room for a period of less than one week at a time.

Most of the surrounding properties to the north, south and west are zoned "B". The exception is a property on the northwest corner of 9th Street North and Market, which is zoned "GO" General Office. The structure on this exception was originally residential, but is

now an office. It is also a Regional Historical Site, the Amidon House. The rest of the development of the properties in the area zoned "B" are a mix of single-family residential, four-family residential, single-family turned into multifamily and an apartment complex abutting the subject site's north side. The properties east of the site, have frontage on Broadway, are zoned "LC" Limited Commercial and developed an office, a restaurant and fast food, Pizza Hut, Subway and Burger King. The subject site is located in the Historic Mdtown Neighborhood (HMN), which contains the City's four residential historic districts. The HMN housing represents three periods of architecture and construction in the City's history: the boom period of the 1880's; the Craftsman and Prairie periods through the 1920's; and the post 1940's Minimal Traditional period of construction. The examples of Queen Anne, Gothic, Folk Victorian, Craftsman Bungalow, Tudor Revival, Neoclassical Revival, Colonial Revival and various types of multi-family housing in the HMN is unique in that it virtually spans the founding of Wichita to its post WWII era. There are eighteen homes designated as being historic homes and buildings in the HMN, three of them within two blocks of the site, with the previously mentioned Amidon House on the same block as the subject site. The 3-story house on the subject site is an example of the Queen Anne type, estimated to have been built in 1889.

The many large homes in the immediate area around the subject site are still used mainly as single-family residential, with some of them having been converted into apartments. Both of these uses are permitted by right in the "B" zoning district. There are two closest Bed & Breakfast to the site, are in the Historic Midtown Neighborhood, approximately ½ mile away. One of B&Bs is located on the southeast corner of 11th Street and Topeka Street (approved 08-25-1992) zoned is "GO". The other B&B is zoned "B", is located at 1208 North Emporia and was approved by the MAPC 08-08-2002. One of the conditions of this B&B was it being effective for only a 2-year period, with extension beyond this time to be applied for by the owner/applicant. If renewal is not applied for the Conditional Use of the B&B would end at the end of the 2-year period. This condition was the result of the Historic Midtown Steering Committee's concerned about the density of bed and breakfasts in the neighborhood, the existence of zoning issues in the area, and the need to fulfill the planning process set out for the development of the Historic Midtown Neighborhood.

The applicant has submitted a site plan. The site plan shows the footprint of the house, the brick drive and onsite parking area, wrought iron and wooden fencing, a gazebo, a garage and some landscaping. The applicant proposes to use 3 bedrooms for the B&B, provide a continental breakfast and to continue to live in the house. Onsite parking would provide one parking space for the owner and three marked spaces for the guests using the three bedrooms.

CASE HISTORY: Platted as part of Hyde & Ferrell's Addition, recorded November 23, 1882.

ADJACENT ZONING AND LAND USE:

NORTH:	"B" Multi-family Residential	Single family, apartment
EAST:	"LC" Limited Commercial	Fast foods, office, restaurant
SOUTH:	"B" Multi-family Residential	Single family
WEST:	"B" Multi-family Residential	Single family, 4-family residential
	"GO" General Office	apartment, office

PUBLIC SERVICES: Market Street is a one-way street going north. 9th Street North is a residential street. There are no traffic counts for this location. Water and sewer are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this property as "medium density residential." Typical uses are duplexes and townhouses. A Midtown Neighborhood Plan (MNP) has been prepared by the Midtown Historic Neighborhood Plan Steering Committee and the MAPD for consideration for adoption by the WCC in 2004. The MNP identifies the subject site and the immediate area as being used as single-family residential and multi-family. The MNP proposes rezoning to better reflect established neighborhood uses to maintain the character of the neighborhood. The MNP also proposes the City establish locational guidelines for appropriate sites for Bed & Breakfasts. The Unified Zoning Code (UZZ) permits a bed and breakfast with a Conditional Use in all residential zoning districts, with the exception of "MH" manufactured housing zoning.

RECOMMENDATION: Based on the information available prior to the public hearing, the MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The site shall be developed and operated in general conformance with the MAPD approved site plan and landscape plan. The current landscaping will remain in place and identified on the landscape plan. Any proposed improvements to the landscaping will be shown on the landscape plan and approved by the Planning Director.
2. There shall be three (3) rooms designated for the bed and breakfast business and there will be a maximum of six (6) transient guests at any one time. These rooms will be shown on a floor plan that will be approved by the OCI, as a condition to obtain the required change of occupancy necessary for a Bed & Breakfast in a single-family residential structure.
3. No freestanding signs. A sign identifying the establishment will be mounted on the wall of the house, no more than 9 square feet and using indirect lighting. No neon, flashing or moving lighting. Location of the sign and the materials for the sign will be shown on the site plan and be approved by the MAPD.
4. Four parking spaces will be provided on the site as indicated on the approved site plan. One space for the owner of the property and 3 spaces for the guests. The parking area will remain paved, marked and will not block the sidewalk.
5. The existing 6-foot wooden fence in the back yard shall remain and be maintained or replaced with comparable and approved solid screening, per the UZZ.
6. The applicant shall obtain all inspections, permits and license from the City, prior to operating the Bed & Breakfast.

7. The owner or the manager of the Bed & Breakfast will reside in the primary structure.
8. Identify existing lighting on the site. The Planning Director must approve any additional proposed lighting.
9. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area contains houses and apartments built anywhere from the late 1880s to 1980. The houses built around the turn of the last century are typically large single-family structures and are still primarily used as single-family residences, although there has been conversion of some of the structures to apartments. The apartment complex and the four-plexus in the area were built in the 1960s and the 1980s. The zoning in the immediate area is predominately "B" multi-family. There is one property zoned "GO" in the immediate area, the Amidon House, a Regional Historical Site, which is being used as an office.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" multi-family. The site could be developed at that density. The intent of the proposed Historic Midtown Neighborhood is to preserve 'contributing elements' in the area. The structure on this site is a 'contributing element' and its "B" zoning is not suitable for the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The Conditional Use permit for a Bed and Breakfast on the site will encourage the preservation of the current structure with a minimal amount of change in its current use, unlike the potential change allowed by the site's current "B" zoning. The detrimental affect of the Conditional Use on the nearby properties will be minimal as opposed to the possible detrimental affects of developing the property as apartments, which is allowed by right in "B" zoning.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this property as "medium density residential." Part of the current research and work being done in the Midtown Historic Neighborhood Plan is addressing the disparity between the Comprehensive Plan's identification of this site as "medium density residential", the area currently being almost entirely zoned "B" and the preservation of the historic single-family structures. The Conditional Use for a Bed & Breakfast would encourage preservation of the current structure, with the possibility income generated by the business being invested in the maintenance of the structure. The Conditional Use for a Bed & Breakfast would be being less disruptive to the area than a multi-family use. The location of this Conditional Use in reference to the 2 closest existing B&Bs to the east is a little less than ½ mile, which would seem to be sufficient site spacing.
5. Impact of the proposed development on community facilities: Minimal, with consideration that all parking would be on site and the parking area is already improved with an approved all weather surface. City utilities would remain as they are.

MOTION: To approve as a consent item, as recommended.

MCKAY moved, **COULTER** seconded the motion, and it carried (12-0).

- 7a. Case No.: CUP2003-55 DP269 (Associated with ZON2003-53)** – Jeff Bannon Auction & Realty, Incl., c/o Jeff Bannon (owner); Baughman Company, P.A., c/o Russ Ewy (agent) Request Creation of The Spencer's Cove Commercial Community Unit Plan on property described as;

and

- 7b. Case No.: ZON2003-53 (Associated with CUP2003-55 DP269)** - Jeff Bannon Auction & Realty, Incl., c/o Jeff Bannon (owner); Baughman Company, P.A., c/o Russ Ewy (agent) Request Zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as;

That part of the North Half of the Northeast Quarter of Section 6, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as commencing at the Northeast corner thereof; thence S 88 degrees 49'10" W along the north line of said Northeast Quarter a distance of 330 feet for a point of beginning; thence S 00 degrees 00'00" W parallel with the east line of the Northeast Quarter a distance of 660.00 feet; thence S 88 degrees 49'10" W parallel with the north line of the Northeast Quarter, a distance of 1320.0 feet; thence N 00 degrees 00'00" E parallel with the east line of the Northeast Quarter a distance of 660.00 feet to a point on the north line of the Northeast Quarter; thence N 88 degrees 49'10" E along the north line of the Northeast Quarter a distance of 1320.00 feet to the point of beginning. Generally located South of 29th Street North and west of Maize Road

MOTION: To defer item to November 20, 2003.

MARNELL moved, **BISHOP** seconded the motion, and it carried (12-0).

8. **Case No.: DR2003-28** – The City of Kechi seeks annexation of properties located adjacent to The City of Kechi, east of Hillside Road and north of 61st Street North on property described as;

The proposed annexation area falls within the Small City Growth area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in 2002. Although the Sedgwick County Development Guide Map does not specifically designate future growth boundaries amongst Kechi, Park City and Bel Aire, it appears that this annexation area located east of Hillside would be most efficiently serviced by the City of Kechi. The City of Kechi Comprehensive Development Plan 1995-2010 does identify future residential land uses for this annexation area.

Staff has concluded that the proposed annexation area located east of Hillside Road and north of 61st Street North is consistent with the Wichita-Sedgwick County Comprehensive Plan. Staff recommends that the Metropolitan Area Planning Commission find the unilateral annexation proposed by Resolution No. 03-507 of the City of Kechi to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan

MOTION: To approve as a consent item as recommended.

MCKAY moved, **COULTER** seconded the motion, and it carried (12-0).

9. Review the draft 2004 Unified Planning Work Program (UPWP), offer comments, and establish a public meeting to adopt the 2004 annual program, presented by Jamsheed Mehta.

JAMSHEED MEHTA Planning staff presented report.

The Unified Planning Work Program (UPWP) is the MPO's document identifying projects, programs and initiatives for the fiscal year. The document is required by federal law, and is the basis for receiving and expending federal transportation planning funds.

Transportation Planning funds from the US DOT provide for the salary of eight (full-time equivalent) staff positions, and all other expenses of the Transportation Division, including transportation studies, contractuels, commodities and capital outlays.

The proposed UPWP document includes projects and programs from January to December 2004. Several projects are repeated each year, such as compilation of the Transportation Improvement Program, monitoring and reporting of transportation data, and providing the coordination between different levels and units of government. However, some of the major projects include:

- Coordinating the South Area Transportation Study
- Updating the 2030 Transportation Plan
- Revising the MPO's planning boundary and representative membership
- Developing a project ranking methodology
- Updating and documenting the Congestion Management System
- Preparing and implementing the Public Involvement Process
- Coordinating Intelligent Transportation System projects
- Assisting in preparing a Transit Development Program
- Preparing a railroad operations consolidation and grade separation plan

The draft UPWP will be made available for public comment following the MPO's November 6, 2003 meeting. The Technical Advisory Committee (TAC) will review the draft UPWP on November 17, 2003, and the MPO will hold a public meeting on November 20, 2003 prior to adopting the final document. The Wichita and Sedgwick County governing bodies must also approve the UPWP in order authorize local matching funds.

Recommendation: a) Review the draft 2004 UPWP and provide comments to staff;
b) Establish November 20, 2003 as the public meeting date to adopt the 2004 UPWP.

DUNLAP The question about the Population Employment forecast, is Wichita State involved in this study?

MEHTA Yes that is Wichita State's contract. They did that six years ago for us and we are asking them to update their numbers since the year 2000 information is now available to them. Plus the economic activities and the employment sectors have changed.

DUNLAP I just wanted to make sure we weren't doing things with two different organizations.

MEHTA They are the ones that will be giving us the final numbers.

MCKAY South Area Transportation Study is that the Bypass around the southeast side?

MEHTA It could be, but we'll start with a clean slate with no lines drawn right now, but do we need more highways, or will the existing grid system of streets be expanded to four lanes and high speeds. So it will be starting with a do-nothing alternative and testing to see whether we need a high level facility like K-96 or I-235 system.

BARFIELD There is already an option on the table if I am not mistaken, isn't the City working with BNSF to do an overpass or underpass at 29th Street?

MEHTA The BNSF requested City of Wichita to explore those options; they would love to see 29th Street either gone or separated above the railroad lines because at that point there are 14 BNSF tracks. Most of them are associated with the yard but 3 of them are for the through trains and if they didn't have 29th Street to be bothered with then they could park their trains right there and have longer trains and have better operations. The problem is that 29th Street is right next to Broadway so what kind of geometric solution do we have to get all that traffic which is less than a mile away you have a ramp at Hydraulic and I-135, so it is an important road and maybe there is a way that we connect that to some other streets bringing it out on 21st Street or taking it north to 33rd Street. This is what that study would do and it will be a piece of a larger study called the 21st Street Revitalization Corridor which has its scope all the way from WSU-Hillside to Amidon on the west side.

BARFIELD So this study then takes in not only the BNSF but also the UP railroad?

MEHTA It will have to, yes.

GAROFALO I didn't notice anything in here about the 25th Street Bridge over on I-235 is that in here?

MEHTA The design has been approved, it is only a question of the City of Wichita identifying the 25th to 29th Street bridge over the Big Ditch. That will show up in the C.I.P. of the City of Wichita. Used to be for the year 2006, but I don't think it will be in the current 10 year program anywhere. The UPWP has to do with only planning studies and planning activities not construction. Construction projects are in the T.I.P.

BARFIELD You talked about the opportunities for AMTRAK run a study train through here to see what the possibility might be and what was the results of that?

MEHTA About a year ago there was some talk between AMTRAC and BNSF that if in fact the BN would ask the AMTRAC folks instead of going through Newton and western Kansas divert from Newton coming south toward Wichita they would basically be running on a faster line and BNSF wouldn't have to maintain the western Kansas line which they are only maintaining it for 70 miles per hour because of AMTRAC, otherwise they don't really need to. It didn't go anywhere because AMTRAC couldn't make any decisions because it is really strapped right now, in fact with this new year budget it is strapped to do any kind of changes in it service.

MITCHELL We don't have an Advanced Plans meeting scheduled until December 11th would it be possible for you to do a couple of hours of workshop with those of us on the Commission who think we need more education on this plan before voting on it.

MEHTA No problem. I am also going by the assumption that every time I am bringing an MPO Agenda Item some of you might be familiar with what we did last year but if I am not bringing that as often or as frequently would you like to explore what is this thing called an MPO and the various things associated with it, or would you rather stick with UPWP and go into more detail for this document.

SCHLEGEL We will setup a workshop and any Commissioner interested can come to it. November 13th at 7:30 a.m.

HENTZEN Do you think that the thing over the Big Ditch is that far enough along that it can not be changed or do we know enough about it?

MEHTA A new bridge over the Big Ditch, the design of the 25th Street interchange and how it crosses over to connect to 29th on the west side of the floodway the design is done and that is the only design out of any other potential bridges that could be crossing. The C.I.P. has had a line on it which says floodway bridge without naming which one and has had it in the C.I.P. for the last 4-5 years if there was enough funding available. It could be the 29th Street bridge, it could be pushed forward but I don't think it has enough funding that it needs.

MOTION: To establish November 20, 2003 as the public meeting date to adopt the 2004 UPWP.

GAROFALO moved, **BISHOP** seconded the motion, and it carried (11-0).

The Metropolitan Area Planning Department informally adjourned at 4:51 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2003.

November 6, 2003
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John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)